

the bonded premises on determination of tax during the period covered by the return (except spirits on which tax has been prepaid).

(2) *Return periods*—(i) *Definitions*. For purposes of this section, the following terms have the meanings indicated:

Reasonably expects. When used with reference to a taxpayer, *reasonably expects* means the taxpayer was not liable for more than \$50,000 in taxes the previous year and there is no other existing or anticipated circumstance known to the taxpayer (such as an increase in production capacity) that would cause the taxpayer's liability to increase beyond that limit.

Taxpayer. A taxpayer is a person who is liable for excise tax imposed with respect to distilled spirits by 26 U.S.C. 5001 and 7652 under the same Employer Identification Number as defined in 26 CFR 301.7701-12.

(ii) *Semimonthly return period*. Except in the case of a taxpayer who qualifies for, and chooses to use, quarterly return periods as provided in paragraph (b)(3) of this section, all taxpayers must use semimonthly return periods for deferred payment of tax. The semimonthly return periods shall run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month, except as otherwise provided in § 19.523(c).

(iii) *Quarterly return period*. Effective January 1, 2006, a taxpayer who reasonably expects to be liable for not more than \$50,000 in taxes with respect to distilled spirits imposed by 26 U.S.C. 5001 and 7652 for the current calendar year, and who was liable for not more than \$50,000 in such taxes in the preceding calendar year, may choose to use a quarterly return period. In such a case the last day for payment of tax and filing of the return will be the 14th day after the last day of the calendar quarter. However, the taxpayer may not use the quarterly return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds \$50,000, and any tax which has not been paid on that date will be due on the 14th day after the last day of the semimonthly period in which that date occurs.

(b) *Conditions under which deferral is denied*. Notwithstanding the posting of a withdrawal or unit bond by the proprietor, the tax shall be prepaid as provided in paragraph (c) of this section—

(1) Where a proprietor has defaulted in any payment of tax under this section, during the period of such default and until the appropriate TTB officer finds that the revenue will not be jeopardized by deferral; or

(2) Where a proprietor, who, after having been notified of his deficiency by the appropriate TTB officer (i) fails to maintain records required by this part to substantiate the correctness of his tax returns or (ii) otherwise fails to comply with any provisions of this part, is so notified by the appropriate TTB officer.

(c) *Prepaid taxes*. The tax on distilled spirits shall be paid pursuant to a prepayment return on Form 5000.24 in all cases where the tax is required to be paid before the spirits are withdrawn from bond. A single prepayment return on Form 5000.24 may cover one or more transactions. The proprietor shall note the serial number of the Form 5000.24 and the date and time such prepayment return was filed on the individual record of tax determination.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended, 1395, as amended (26 U.S.C. 5061, 5555))

[T.D. ATF-198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF-219, 50 FR 51387, Dec. 17, 1985; T.D. ATF-365 60 FR 33668, June 28, 1995; T.D. TTB-41, 71 FR 5601, Feb. 2, 2006]

§ 19.523 Time for filing returns.

(a) *Payment pursuant to semimonthly return*. Except when payment is pursuant to a quarterly return as provided in paragraph (d) of this section, where the proprietor of bonded premises has withdrawn spirits from such premises on determination and before payment of tax, the proprietor shall file a semimonthly tax return covering such spirits on Form 5000.24, and remittance, as required by § 19.524 or § 19.525, not later than the 14th day after the last day of the return period, except as provided by paragraph (c) of this section. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday,

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Sunday, or legal holiday, except as provided by paragraph (c)(3) of this section.

(b) *Payment pursuant to prepayment return.* If the proprietor of a distilled spirits plant desires to withdraw spirits from bonded premises on determination of tax and does not have on file an approved withdrawal or unit bond of sufficient penal sum to cover the withdrawal, if there is default by him in any payment of tax under this part, or the proprietor is notified by the appropriate TTB officer as provided in § 19.522(b)(2), the proprietor shall not remove the spirits from the bonded premises until the tax thereon has been paid. To pay the tax, the proprietor of the bonded premises shall file a prepayment return on Form 5000.24, and remittance as required by § 19.524 or § 19.525, before removal of the spirits.

(c) *Special rule for taxes due for the month of September (effective after December 31, 1994).* (1)(i) Except as provided in paragraph (c)(1)(ii) of this section, the second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(ii) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 19.524, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(2) *Amount of payment: Safe harbor rule.* (i) Taxpayers are considered to have met the requirements of paragraph (c)(1)(i) of this section, if the amount paid no later than September

29 is not less than $\frac{11}{15}$ (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) Taxpayers are considered to have met the requirements of paragraph (c)(1)(ii) of this section, if the amount paid no later than September 28 is not less than $\frac{2}{3}$ (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(3) *Last day for payment.* If the required taxpayment due date for the periods September 16–25 or September 16–26 as applicable, falls on a Saturday or legal holiday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

(4) *Example. Payment of tax for the month of September.* (i) *Facts.* X, a distilled spirits plant proprietor required to pay taxes by electronic fund transfer, incurred tax liability in the amount of \$30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of \$45,000, and for the period September 27–30, X incurred tax liability in the amount of \$2,000.

(ii) *Payment requirement.* X's payment of tax in the amount of \$30,000 for the first semimonthly period of September is due no later than September 29 (§ 19.522(a)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 19.523(c)(1)(i)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 19.523(c)(2)). Under the safe harbor rule, X's payment of tax must equal \$21,990.00, $\frac{11}{15}$ ths of the tax liability incurred during the first semimonthly period of September. Additionally, X's payment of tax in the amount of \$2,000 for the period September 27–30 must be paid no later than October 14 (§ 19.523(c)(1)(i)). X must also pay the underpayment of tax, \$23,010.00,

for the period September 16–26, no later than October 14 (§ 19.523(c)(2)).

(d) *Payment pursuant to quarterly return.* Where the proprietor of bonded premises has withdrawn spirits from such premises on determination and before payment of tax, and the proprietor uses quarterly return periods as provided in § 19.522(b)(3), the proprietor shall file a quarterly tax return covering such spirits on Form 5000.24, and remittance, as required by § 19.525, not later than the 14th day after the last day of the quarterly return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday.

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§ 19.524 Payment of tax by electronic fund transfer.

(a) *General.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in distilled spirits taxes combining tax liabilities incurred under this part and parts 26 and 27 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of distilled spirits taxes during the succeeding calendar year. Payment of distilled spirits taxes by cash, check, or money order, as described in § 19.525, is not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including distilled spirits products brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of

corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the words “at least 80 percent” shall be replaced by the words “more than 50 percent” in each place it appears in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a “controlled group of corporations” apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of determining who is required to make remittances by EFT.

(3) A taxpayer who is required by this section to make remittances by EFT, shall make a separate EFT remittance and file a separate return, TTB F 5000.24, for each distilled spirits plant from which spirits are withdrawn upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in distilled spirits taxes during the previous calendar year, combining tax liabilities incurred under this part and parts 26 and 27 of this chapter, shall notify the appropriate TTB officer. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of the taxpayment to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in § 19.523. The request shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in distilled spirits taxes during the preceding calendar year, combining tax liabilities incurred under this part and parts 26